

HOUSE No. 1335

By Mr. Koutoujian of Waltham, petition of Peter J. Koutoujian and Anne M. Paulsen for legislation to provide for the establishment of an environment appeals panel within the Division of Administrative Law Appeals. Environment, Natural Resources and Agriculture.

The Commonwealth of Massachusetts

In the Year Two Thousand and Five.

AN ACT PROVIDING FOR THE ESTABLISHMENT OF AN ENVIRONMENTAL
APPEALS PANEL WITHIN THE DIVISION OF ADMINISTRATIVE LAW
APPEALS.

*Be it enacted by the Senate and House of Representatives in General
Court assembled, and by the authority of the same, as follows:*

1 There shall be within the division of administrative law
2 appeals, and under the direction and supervision of its chief
3 administrative magistrate, an environmental appeals panel con-
4 sisting of no fewer than five administrative magistrates appointed
5 by said chief administrative magistrate, who shall serve as profes-
6 sional employees as defined by chapter one hundred fifty E but
7 not as confidential employees. The administrative magistrates of
8 said panel shall be initially the persons who, on January 1, 2004,
9 were serving as administrative law judges in the office of adminis-
10 trative appeals in the executive office of environmental affairs and
11 who were transferred thereafter to the division of administrative
12 law appeals, and who were employed at the division of adminis-
13 trative law appeals on November 1, 2004.

14 The administrative magistrates of said panel shall adjudicate,
15 under chapter thirty A and the standard adjudicatory rules of prac-
16 tice and procedure promulgated by the executive office for admin-
17 istration and finance pursuant to chapter thirty A section 9, any
18 and all appeals of permits, variances, enforcement orders, civil
19 administrative penalties and other decisions, determinations and
20 actions issued by the department of environmental protection or
21 division, board, commission or program thereof. Each such deci-
22 sion, determination and action shall give notice that persons

23 having a right to appeal same shall do so by filing said appeal,
24 within the time prescribed by statute or regulation, with the divi-
25 sion of administrative law appeals, together with payment of any
26 applicable appeal filing fee.

27 The administrative magistrates of said panel shall adjudicate
28 appeals transferred to the division of administrative law appeals
29 by the board of registration of hazardous waste site cleanup pro-
30 fessionals, and any other appeals transferred to the division of
31 administrative law appeals by any other agency of the Common-
32 wealth, or by any municipality of the Commonwealth or agency
33 thereof, in which damage to the environment as defined in section
34 seven A of chapter two hundred and fourteen is or might be at
35 issue.

36 Said panel shall maintain, to the fullest extent practicable, a
37 complete physical and technological separation from any agency,
38 department, board, commission or program whose decisions,
39 determinations or actions may be appealed to it.

40 Said panel shall implement procedures to identify, upon the
41 receipt of each appeal or as soon thereafter as possible, jurisdic-
42 tional defects warranting dismissal, settlement potential favoring
43 assignment to an administrative magistrate of the division of
44 administrative law appeals for settlement facilitation or to an out-
45 side mediator or dispute resolution office for alternative dispute
46 resolution, and circumstances justifying expedited adjudication
47 including but not limited to a court order or decision directing
48 same, or the involvement of a public work or project, or the
49 involvement of a project or work implicating national security, an
50 imminent threat to public health, or environmental damage.

51 Every decision issued by a commissioner or other head of
52 agency, or designee, following the issuance of a recommended
53 decision by an administrative magistrate of said panel, shall be an
54 agency decision subject to judicial review pursuant to chapter
55 thirty A.